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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/008,201	12/06/2001	Randy D. Petrea	5374	2152

7590 07/12/2004

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EXAMINER

GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 07/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/008,201	Applicant(s) PETREA ET AL.	
	Examiner Jeffrey L. Gellner	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8 March 2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

Acknowledgement is made of Applicant's IDS received 8 March 2004. The reference, however, has been previously cited by Examiner on the 892 that accompanied office action no. 3. To avoid confusion the reference has been struck through on Applicant's instant 1449.

Claim Rejections - 35 USC §103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. §103(a) as being unpatentable over Phillips et al. (US 3,379,014).

As to Claim 1, Phillips et al. disclose a synthetic hydrophobic sand formulation (col. 2 lines 19-29 and col. 5 lines 56-73) wherein said sand formulation comprises sand (col. 5 line 61) and at least one humic acid removal redistribution compound ("alkali metal carbonate or alkali metal polyphosphate" of col. 5 lines 23-29), wherein at least a portion of said sand formulation is treated with humic acid (col. 5 lines 28 & 56-73). Not disclosed is the formulation exhibiting a penetration period of at least 9 seconds for a drop of 2 molar ethanol under a minimal ethanol drop test. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the formulation of Phillips et al. by having the formulation exhibit a penetration period of at least 9 seconds for a drop of 2 molar ethanol under a minimal ethanol

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drop test so as to stop loss of water through seepage in the banks of canals (see Phillips et al. at col. 1 lines 17-20).

Response to Arguments

Applicant's arguments filed 23 April 2004 have been fully considered but they are not persuasive. Applicant's argument is that Phillips et al. do not teach or suggest a synthetic hydropobic sand formulation comprising in the combination both sand and at least one humic acid removal redistribution compound (Remarks page 4 1st complete para.).

Examiner considers Phillips et al. to disclose a synthetic hydropobic sand formulation comprising in the combination both sand and at least one humic acid removal redistribution compound because Phillips et al. disclose sand at col. 5 line 61 and alkali metal carbonate or alkali metal polyphosphate at col. 5 lines 23-29. Alkali metal carbonate or alkali metal polyphosphate are considered to be a humic acid removal redistribution compounds because the compounds act to "precipitate[s] hardness elements naturally occurring in the body of water so that the water soluble humate salt is not prematurely precipitated before it permeates the subsoil" (Phillips et al. at col. 5 lines 16-19). Thus, Phillips et al. removal redistribution compounds act in a similar manner and for a similar purpose as does Applicant's removal redistribution compound as disclosed on page 9 lines 1-10 of the Specification.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Petrea et al. disclose in the art a method of removing humic acid from soil.

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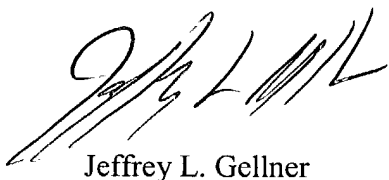
THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.



Jeffrey L. Gellner



PETER M. POON
SUPERVISORY PATENT EXAMINER

7/2/04